

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 410 of 1999.

Reserved On: 28.11.2006

Date of decision: 14.12.2006.

State of H.P.

... Appellant

Versus

Rakesh Kumar & Another

... Respondents

Coram :

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting?¹ No.

For the appellant:

Mr. Ashutosh Burathoki, Addl. Advocate
General.

For the respondents:

Mr. Surinder Sharma, Advocate, for respondent
No. 1.

Mr. Pritam Singh vice Mr. Ashwani K. Sharma,
Advocate, for respondent No. 2.

V.K. Ahuja, J.:

This is an appeal filed by the State of Himachal Pradesh against the judgment of the Court of learned Chief Judicial Magistrate, Solan, dated 16.3.1999, vide which both the respondents were acquitted of the charges framed against them under Sections 41/42 of the Indian Forest Act read with Section 379/34 I.P.C.

Briefly stated the facts of the case are that during the night intervening 24.1.1992 PW10 Niranjana Singh, the then S.H.O. Police Station, Dharampur was present outside the Police Station for checking

¹Whether reporters of Local Papers may be allowed to see the judgment? No.

of the vehicles along with other police officials, a truck No. HIS 7895 came from Dharampur side. The truck was stopped and both the accused persons were present in the truck. The accused stated that they have loaded potatoes in the truck, but on checking, sleepers were recovered without export hammer and PWs Surinder Kumar and Sanjeev Kumar were associated and the timber was taken in possession, which were 65 sleepers. On this a report was lodged with the police and the case was investigated and the challan was filed before the learned trial Court who tried the respondents resulting in their acquittal as detailed above.

I have heard Mr. Ashutosh Burathoki, learned Additional Advocate General, for the appellant, Mr. Surinder Sharma, Advocate for respondent No. 1 and Mr. Pritam Singh vice Mr. Ashwani K. Sharma, Advocate, for respondent No. 2 and have gone through the record.

The submissions made by the learned Additional Advocate General were that the guilt of the accused persons have been duly established from the statement of the Investigating Officer and to some extent by the statement of both the witnesses to the recovery memos and therefore, the findings recorded by the learned trial Court acquitting the respondents are liable to be reversed. On the other hand, the learned counsel for the respondents have supported the impugned judgment for the reasons given therein and have also referred to some infirmities and contradictions in the prosecution case, which shall be discussed below.

On a perusal of the evidence, it is clear that the prosecution case mainly rests on the testimony of Investigating Officer and two other witnesses who were witnesses to the recovery memo. PW10 Niranjana Singh, the then S.H.O. and Investigating Officer had intercepted the truck and found both the accused persons present there and associated PWs

Surinder Kumar and Sanjeev Kumar when he prepared the recovery memo. He stated that 65 sleepers were recovered which were not having any hammer mark. He did not state as to who was the driver of the vehicle and who was sitting along with the driver. He had given the time of recovery as 3.00AM and stated that when the vehicle was standing he had called for both the witnesses. He admitted that the names of the driver and conductor are mentioned in the Log Book, but denied the suggestion that he intentionally did not take in possession the Log Book. He stated that both the witnesses reached there at 3.30AM. He also admitted that Sanjeev Kumar was running a Tea Shop in front of the Police Station. He did not associate the owner of the Truck Kehar Singh during investigation of the case.

PW1 Surinder Kumar, witness to the recovery memo had stated that on 24.1.1992, the police officials were unloading the sleepers from the truck and only police officials were present and none else was present. He did not state that the accused persons were in the truck or that they were intercepted with the sleepers. He was declared as hostile and was allowed to be cross-examined by the prosecution. He denied that one of the accused was driver and Rakesh Kumar was accompanying him. He clearly stated that he did not see the accused persons there. He only admitted that the sleepers were unloaded in his presence. He again stated in his cross-examination that he is not knowing Sanjeev Kumar and had not seen the accused persons there. He stated that he cannot say since when the truck was standing at the spot.

PW4 Sanjeev Kumar has stated that the police had intercepted a truck on 24.1.1992 in which there were sleepers. Both the accused were in the truck and the timber was taken in possession at that

time. In his cross-examination, he stated that he has got a shop opposite to Police Station and he had come thereto give tea. When he reached the shop, truck was already standing there and when he went there, none was present there. He stated that the sleepers were unloaded from the truck at 10.30 and when he had gone there at 6.00AM to give tea, neither the truck nor the sleepers were there, though the prosecution story is that he was called at 3.30AM and the truck was intercepted at 3.00AM. He further stated that he cannot identify both the accused persons. The police only asked him that they had taken a truck in possession and he should sign the recovery memo and he signed then. The statements of other witnesses are not material in regard to the place from where the trees were allegedly cut.

From the above discussion, it is clear that the statement of the Investigating Officer has not been corroborated by both the witnesses to the recovery memo when examined in Court and the net result of the discussion is that the learned trial Court had rightly concluded that the guilt of the respondents was not established and the said judgment cannot be said to be perverse in any manner so as to call for interference by this Court and as such, the findings recorded by the learned trial Court acquitting the respondents are affirmed. The appeal filed by the appellant stands dismissed. Bail bonds stand discharged forthwith. A copy of the judgment along with record be sent to the concerned Court.

December 14, 2006
(BSS)

(V.K. Ahuja),
Judge

